

## **TITLE 14. Fish and Game Commission**

### **Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 203.1, 205, 219, 220, and 2860 of the Fish and Game Code and Section 36725 of the Public Resources Code and to implement, interpret or make specific sections 200, 203.1, 205, 219 and 220 of the Fish and Game Code and Section 36725 of the Public Resources Code, proposes to amend sections 27.82 and 630 and adopt Section 632, Title 14, California Code of Regulations, regarding Marine Protected Areas.

#### **Informative Digest/Policy Statement Overview**

The following alternatives establish new Marine Protected Areas (MPAs) in the area within NOAA's Channel Islands National Marine Sanctuary. This area includes the northern Channel Islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel) and Santa Barbara Island from the shoreline to a distance of 6 nautical miles offshore. Each alternative includes some areas outside state waters (from 0 to 3 nautical miles offshore). The areas within state waters are addressed in this proposal as an initial phase. For the areas outside state waters, NOAA has indicated its intent to pursue establishment of marine reserves under the National Marine Sanctuaries Act. The goal is to complement the proposed State action by completing the marine reserve network in the Sanctuary. These new areas constitute the addition of a new Section 632 to Title 14, California Code of Regulations.

The Department's recommended preferred alternative establishes eleven (11) new State Marine Reserves where it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a permit or specific authorization from the Commission for research, restoration, or monitoring purposes, one (1) State Marine Conservation Area where only the recreational take of spiny lobster (*Panulirus interruptus*) and pelagic finfish is allowed, and one (1) State Marine Conservation Area where the commercial and recreational take of spiny lobster and the recreational take of pelagic finfish is allowed. These areas comprise approximately 25% of the waters within the Channel Islands National Marine Sanctuary. For the purposes of these regulations, pelagic finfish is defined as: anchovy, barracuda, blue shark, dolphinfish, herring, mackerels, mako shark, marlin\*, salmon, sardine, swordfish, thresher shark, tunas, and yellowtail (\*marlin is not allowed for commercial take).

Five alternatives to the recommended preferred alternative establish between 7 and 11 State Marine Reserves covering a range of 12% to 34% of the Channel Islands National Marine Sanctuary. The alternatives vary in specific locations and sizes of MPAs. An alternative to delay decision on the matter to the Marine Life Protection Act process is provided along with a no change alternative.

In addition, the proposed regulations remove three existing invertebrate closures on Anacapa and Santa Barbara islands found in sections 630 (b)(5)(C) and 630

(b)(102)(B), Title 14, California Code of Regulations, and three ecological reserves at Anacapa, San Miguel, and Santa Barbara islands. The proposed regulations would re-designate these under the new MPA Section (632, Title 14, California Code of Regulations). Existing regulations on activities in the ecological reserves other than the invertebrate closures would be maintained in the new designations. The proposed regulations also alter the boundaries of the Cowcod Conservation Area around Santa Barbara Island found in Section 27.82(a), Title 14, California Code of Regulations.

Should none of the above MPA alternatives be chosen, the existing MPAs would remain unchanged. At present, this includes the no-take area and two invertebrate closures at Anacapa Island, an invertebrate closure at Santa Barbara Island, and seasonal marine mammal and sea bird protective closures at San Miguel, Anacapa, and Santa Barbara islands.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, on Friday, February 8, 2002, at 10:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Hubbs-Sea World Institute, Shedd Auditorium, 2595 Ingraham Blvd., San Diego, CA on Thursday, March 7, 2002 at 10:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at California State University, Dumke Auditorium, 401 Golden Shore, Long Beach, CA on Thursday, April 4, 2002 at 10:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at City Council Chambers, 990 Palm Street, San Luis Obispo, CA on Friday, August 2, 2002 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before Friday, July 26, 2002 at the address given below, or by fax at (916) 653-5040, or by e-mail to [jduffy@dfg.ca.gov](mailto:jduffy@dfg.ca.gov), but must be received no later than August 2, 2002, at the hearing in San Luis Obispo, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy Reed at the preceding address or phone number. John Ugoretz, Marine Region, Department of Fish and Game, phone (805) 560-6758, has been designated to respond to questions

on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

#### Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Each alternative may have negative short-term impacts on commercial and recreational fishing businesses. The impacts presented here do not represent a complete socioeconomic impact analysis, but rather what is generally referred to as a Step 1 analysis or “maximum potential loss.” This analysis simply sums up the activity that currently takes place within a given alternative and translates these activities into corresponding economic values. Maximum potential loss does not take into account other management strategies/regulations and human behavioral changes, such as moving to other areas or changing fishing gear, that may mitigate, offset, or make matters better or worse. In addition, maximum potential loss does not consider possible future benefits. Comparisons of maximum potential loss to commercial fish landings, income derived from recreational fisheries, and maximum impact to non-consumptive user derived income were computed for each alternative, as well as expansions of the direct impacts of commercial fish landings to local economies. It is important to note that non-consumptive users are considered beneficiaries of MPAs and thus impact to non-consumptive income is positive.

These calculations represent the loss and value in the initial State water phase of each alternative. Full comparisons of maximum potential loss and values for both State and federal phases have also been computed.

The potential impacts of the Department's recommended preferred alternative are detailed here and compared to the other alternatives. The maximum potential loss to commercial fish landings would vary between 1.7% and 16.5% of annual ex-vessel value generated in Sanctuary waters in the Department preferred alternative. This reflects a combined maximum potential annual ex-vessel loss of \$3,222,810 (1996 - 1999 average ex-vessel value) to commercial fisheries. This loss can be expanded to include losses in total income including processors, fish buyers and other related business. This maximum potential loss in income from commercial activities to all counties is estimated at \$9,910,520 per year.

The maximum potential loss to income derived from recreational fishing varies between 9.9% and 26.2% annually in the Department preferred alternative. This represents a maximum potential loss in income of \$5,720,077 generated by recreational fishing annually.

Maximum potential impact to income derived from non-consumptive activities (diving, whale watching, kayaking, sightseeing, and sailing) ranges between 10.8% and 29.1% annually in the Department preferred alternative. This represents a maximum potential annual income of \$1,385,756 generated by non-consumptive activities annually. Non-consumptive income is that supported by existing activities. This income is expected to increase over time by an unknown amount due to expected improvement in site quality.

In the long term, the potential negative impacts are expected to be balanced by the positive impacts of sustainable fisheries, non-consumptive benefits, and ecosystem function in the reserve areas. In addition potential benefits may be realized through adult fish spillover to areas adjacent marine reserves and larval transport to distant fished sites.

The Commission has made an initial determination that the adoption/amendment of this regulation may have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or

- (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Each alternative has potential impacts on the creation and elimination of jobs related to commercial and recreational fishing and non-consumptive activities. As with economic impacts, the impacts listed here are a Step 1 or “maximum potential loss” analysis. This analysis simply sums up the activity that currently takes place within a given alternative and translates these activities into corresponding economic values. Maximum potential loss does not take into account other management strategies/regulations and human behavioral changes that may mitigate, offset, or make matters better or worse. In addition, maximum potential loss does not consider possible future benefits.

The maximum potential numbers of jobs lost relating to commercial and recreational fishing activities is estimated to be 435 and the existing jobs supported by non-consumptive is estimated to be 37 under the preferred alternative. This represents the potential elimination of jobs in the initial State water phase. The range in job losses for the other alternatives is from 224 (Alternative 1) to 564. The range of jobs supported by non-consumptive activity for the other alternatives is 12 (Alternative 3) to 44 (Alternative 5). Non-consumptive jobs are those supported by existing activities. These jobs are expected to increase over time by an unknown amount due to improvements in site quality.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State:

Any additional costs to State agencies for enforcement, monitoring, and management of MPAs are difficult to estimate and depend on not only the impacts of the proposed regulation but other regulations and processes as well. Current cooperative efforts with the Sanctuary and Channel Islands National Park provide funding for some existing costs and are expected to increase with the adoption of these regulations. While changes in enforcement, monitoring, and management may occur, these changes are not expected to create significant changes to funding or costs to State agencies.

## Enforcement Efforts

The Department's Marine Region currently deploys 57 law enforcement officers statewide. In the Santa Barbara and Ventura county area 3 lieutenants and 4 wardens/boarding officers positions are funded and would form the baseline of MPA enforcement. One 54 ft (16.5 m) patrol boat will be stationed in Ventura in the coming year. A second 54 ft patrol boat is presently stationed in Dana Point and assists with enforcement in the Channel Islands. Marine Region wardens currently enforce a range of regulations around the Channel Islands. The proposed regulations may change the specific enforcement duties, but not the level of effort.

The Sanctuary contributes funds directly to the Department to enhance enforcement capabilities in Sanctuary waters. This funding is estimated to continue at a rate of \$30,000 per year. In addition the Sanctuary conducts aerial surveys which add to the enforcement coverage.

The Channel Islands National Park employs six full time rangers stationed on the islands. These rangers are deputized to enforce all federal, state, and county laws and regulations within one nautical mile of the shoreline. The National Park has three patrol boats stationed at the islands and primarily used for the enforcement of marine laws and regulations as well as public safety.

## Research and Monitoring Efforts

Fishery-dependent information refers to data collected from fishing harvest, either from a commercial or recreational fishery. Fishery-dependent monitoring and data collection are concerned with activities that remove fish from the resource (extractive uses). These assessments will continue regardless of MPA establishment.

The Department has assessed a variety of fisheries and species through independent methods including dive, trawl, hydroacoustic, and other surveys. These efforts are expected to increase with the establishment of MPAs, however much of this may be completed by grant funded university and other researchers. The proposed regulations do not specifically require increases in Department costs.

The Sanctuary conducts a variety of ongoing monitoring programs at the Channel Islands. These include a collaborative research program, which links fishermen with scientists, aerial monitoring, habitat mapping, seabird research, kelp forest monitoring (in conjunction with the National Park), oceanographic sampling, intertidal monitoring (in conjunction with the National Park), and acoustic tracking of giant seabass. These activities are expected to continue with additional funds designated towards monitoring new MPAs.

The Channel Islands National Park also conducts a variety of monitoring programs. These include seabird monitoring, rocky intertidal monitoring, kelp forest monitoring, and ecological research. The continuation of these long-term programs not only provides a baseline of data on resource status but will allow examinations of the effectiveness of MPAs. The proposed network of reserves contains existing monitoring both within and outside MPAs.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The agency must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy  
Assistant Executive Director

Dated: January 22, 2002